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12 Attorneys for Defendants,

13 TESLA, INC. dba TESLA MOTORS, INC.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 DEMETRIC DI-AZ, OWEN DIAZ AND
17 LAMAR PATTERSON

18 Plaintiffs,

19 v.

20 TESLA, INC. DBA TESLA MOTORS,
21 INC., CITISTAFF SOLUTIONS, INC.;
22 WEST VALLEY STAFFING GROUP;
23 CHARTWELL STAFFING SERVICES,
24 INC.; NEXTSOURCE, INC.; and
25 DOES 1-10, inclusive

26 Defendants.

Case No. 17-cv-06748-WHO

**DECLARATION OF PATRICIA M. JENG IN
SUPPORT OF DEFENDANT TESLA, INC.'S
MOTION FOR JUDGMENT AS A MATTER
OF LAW PURSUANT TO FED. R. CIV. P.
50(a)**

Courtroom: 2, 17th Floor

Judge: Hon. William H. Orrick

Trial Date; September 27, 2021

Complaint Filed: October 16, 2017

DECLARATION

I, Patricia M. Jeng, declare as follows:

1. I am currently an attorney with the law firm Sheppard Mullin Richter & Hampton, LLP which serves as Defendant Tesla, Inc.'s ("Tesla") attorneys of record in the above-captioned matter. I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. **Exhibit 1** to this declaration consists of true and correct copies of excerpts of the September 29, 2021 Official Trial Transcript in the above captioned matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of October 2021, at San Francisco, California.

/s/ Patricia M. Jeng
Patricia M. Jeng

EXHIBIT 1

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APPEARANCES: (CONTINUED)

For Defendants: SHEPPARD MULLIN RICHTER & HAMPTON LLP
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BY: SUSAN Q. HAINES, ESQ.

Also Present: JOSEPH ALM, ESQ.
- Tesla, Inc.

YUSUF MOHAMED, ESQ.
- Tesla, Inc.

VALERIE CAPERS WORKMAN
- Tesla, Inc.

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PROCEEDINGS

1 THE COURT: All right. And then the other thing I
2 just wanted to mention, yesterday I allowed Wayne Jackson to
3 testify about his experience of hearing the "N" word throughout
4 the factory. And on Monday I admitted Exhibit 106 concerning
5 Mr. Romero's credibility regarding his hearing of the "N" word.
6 I did so because it appears from Tesla's presentation of
7 the case, from the opening of the argument to the designations
8 in the depositions, that it wishes to minimize the use of the
9 "N" word in the workplace at Tesla, which is fine, but so this
10 counter evidence I think is relevant.

11 I am willing and inclined to give the jury a further
12 limiting instruction, and I can do that this morning. It would
13 be primarily at the defendant's -- I'll let the defendant
14 decide whether this is something that you would like or not,
15 but it would be to the effect of:

16 As you know, I admitted Exhibit 106 for the limited
17 purpose of your consideration of the credibility of
18 Mr. Romero's testimony. And yesterday I allowed Mr. Jackson to
19 testify about his experience hearing the "N" word in the Tesla
20 factory.

21 I want to remind you that this case is about Mr. Diaz and
22 the work environment that he experienced at the Tesla factory,
23 not what others in a different part of the facility
24 experienced.

25 MS. KENNEDY: Yes, Your Honor, that would be

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1 THE COURT: Well, if it's better to see Mr. Organ,
2 yes.
3 MS. KENNEDY: I'll move it back a little farther.
4 MR. ORGAN: I think he wants you to move it back.
5 MS. KENNEDY: I'll move it back. That's better.
6 BY MS. KENNEDY:
7 Q. Mr. Diaz, as part of your employment with CitiStaff, you
8 actually completed a direct deposit form so you could be paid
9 through CitiStaff; correct?
10 A. Yes.
11 Q. Did you ever complete any type of direct deposit forms for
12 Tesla?
13 A. No.
14 Q. Mr. Diaz, did you ever get my type of written contract
15 from Tesla?
16 MR. ORGAN: Objection. Calls for a legal conclusion,
17 Your Honor.
18 THE COURT: You can answer that. Any sort of a
19 written agreement from Tesla?
20 THE WITNESS: I did get an agreement, but I don't know
21 if the NDA was part that. So can you be a little more
22 specific, ma'am?
23 BY MS. KENNEDY
24 Q. Sure.
25 Did you ever get any written document from Tesla saying

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DIAZ - CROSS / KENNEDY

1 that you were a Tesla employee at any point in time?
2 A. No, ma'am.
3 Q. Lets go to Exhibit 19.
4 MS. KENNEDY: 19 has been admitted, Your Honor. It's
5 the badge.
6 THE COURT: Okay.
7 (Document displayed.)
8 BY MS. KENNEDY
9 Q. Mr. Diaz, you got this badge, I think you said, around
10 your first day of employment with CitiStaff Solutions; is that
11 correct?
12 A. I got that badge the first day I walked inside of Tesla.
13 Q. Right. And that was before you said you started your
14 safety trainings; correct? Orientations and your safety
15 trainings?
16 A. Yes.
17 Q. And as you can see, it says "Contractor" on the left-hand
18 side of your badge. Do you see that?
19 A. Yes, I see that under the "Certified Forklift" sign,
20 ma'am.
21 Q. Right. And on top of that it says "Tesla Motors";
22 correct?
23 A. Yes.
24 Q. And you're required to wear this badge at all times when
25 you were in the Tesla facility; correct?

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DIAZ - CROSS / KENNEDY

1 A. No. It looks beat up because it was in my wallet, ma'am.
2 Q. Okay. You had to have it on you at all times; correct?
3 A. Yes. That's the only way I can get in and out of the
4 building.
5 Q. Right. So this Tesla badge was to let you get entry into
6 the facility; correct?
7 A. Yes.
8 Q. And is it also -- do you have an understanding as to
9 whether any contractor, whether they're a contractor through a
10 staffing agency or a third-party contractor, who is coming in
11 to the factory where you worked for more than a few days, if
12 they have to go through any type of safety training to be on
13 the factory floor?
14 A. I wouldn't have knowledge of that, ma'am.
15 Q. So you have no idea what the safety orientation
16 requirements are for any visitors to the factory in Fremont;
17 correct?
18 A. Correct.
19 Q. And do you know if lawyers, for example, or accountants
20 who are coming in who have to be on the factory floor, if they
21 have to go through any type of safety training before they are
22 allowed on the Fremont factory floor?
23 A. Can you repeat that question, please?
24 Q. Certainly. Do you have any knowledge one way or the other
25 if, for example, lawyers or accountants or anyone else coming

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DIAZ - CROSS / KENNEDY

1 to the Tesla Fremont facility and they're going to be on the
2 factory floor, if they are provided any type of safety training
3 before they're allowed on the factory floor?
4 A. No, I wouldn't know that.
5 Q. But it's your position, according to your testimony, that
6 anyone who is there -- contractors, employees -- they were all
7 treated the same and you couldn't tell who was who; correct?
8 A. You're misstating my testimony.
9 Q. Well, let me ask you this. It was your testimony that
10 when you got to Tesla, you couldn't tell who a Tesla employee
11 was or a contractor or anyone else; correct?
12 A. Correct.
13 Q. And I also understand that -- I believe you stated that
14 basically from almost the first day that you started working at
15 the Tesla factory in Fremont, you were being called racial
16 slurs; is that correct?
17 A. No. I never stated almost the first day, ma'am.
18 Q. Was it within the first two weeks?
19 A. I can't recall when it first started.
20 Q. Was it before or after August of 2015?
21 A. It was before.
22 Q. So sometime between June and between August of 2015 is
23 when the racial slurs started; correct?
24 A. Yes.
25 Q. And you would agree all those racial slurs that were said

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Debra L. Pas, CSR 11916, CRR, RMR, RPR
Wednesday, September 29, 2021

Debra L. Pas, CRR
Official Reporter - U.S. District Court
(415) 431-1477